

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6627  
PETITION OF JULIA HAWLEY**

OPINION OF THE BOARD  
(Hearing Held: July 17, 2019)  
(Effective Date of Opinion: July 24, 2019)

Case No. A-6627 is an application by Julia Hawley (the "Petitioner") for a variance of 2.60 feet from the side lot line setback, needed for the proposed construction of a one-story addition. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, July 17, 2019. The Petitioner's architect, Carib Daniel Martin, appeared at the hearing in support of the variance application.

Decision of the Board:                      Variance **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 51, Block 6, Chevy Chase Section 3 Subdivision, located at 7105 Fulton Street, Chevy Chase, MD, 20815, in the R-60 Zone. It is a rectangular lot, slightly less than 50 feet wide, with an area of 6,867 square feet. See Exhibit 4(b).

2. The Statement of Justification ("Statement") details why the Petitioner's architect believes the subject property meets the standards for the grant of a variance, as follows:

1) The unusual existing conditions, including:

- a. The screen porch, built in 1939, is an existing nonconforming structure built within the 7 foot side yard setback.
- b. The proposed enclosure of the screen porch to indoor living space maintains the existing scale, proportion, and detailing of the existing neighborhood, and conforms with other development within the neighborhood.

- 2) The non-conforming screen porch in the side yard setback condition existed prior to the applicant taking ownership of the property.
- 3) The requested variance is the minimal necessary to overcome the practical difficulty of adding the needed space within the existing non-conforming residence.
- 4) The variance will have no negative impact on the intent or integrity of the general master plan for the neighborhood.
- 5) The proposed enclosure of the existing screen porch will not have any adverse effect on the abutting or confronting properties as it is in character with the neighborhood and does not exceed the existing footprint of the current porch.

See Exhibit 3. The Site Plan shows that the left side of the existing screen porch is located 4.4 feet from the left (north) side lot line. See Exhibit 4(a).

3. The Petitioner has submitted photographs of five nearby properties which do not comply with the side lot line setbacks, and a map showing the proximity of these properties to the subject property. See Exhibits 4(a) and 5(e). In addition, the Petitioner submitted photographs of the abutting and confronting properties, and of the streetscape. See Exhibit 5(d).

4. At the hearing, Mr. Martin testified that the Petitioner was unable to be present at the hearing because of her job. He testified that she is seeking to enclose an existing screen porch by installing insulated walls. He testified that the existing screen porch was constructed in 1939, that it extends into the side setback, and that it is nonconforming. He suggested that the porch may have originally been built to comport with a five (5) foot side setback. Mr. Martin testified that enclosing this screen porch with walls would not change the classification of the space, presumably referring to the fact that the County's Department of Permitting Services treats screen porches as enclosed space for setback purposes.

Mr. Martin testified that Ms. Hawley had already received a variance for the proposed construction from Chevy Chase Section 3. Referring to Exhibit 5(c), he explained that this Exhibit shows what the Petitioner's house currently looks like, and what it will look like if the variance is granted and the porch is enclosed. He testified that the change in the character of the house is minimal. Finally, Mr. Martin testified that for privacy reasons and due to the proximity of the neighboring property, there would not be a window in the new "side" (i.e. north) wall of the proposed screen porch enclosure. See Exhibit 5(b).

## **FINDINGS OF THE BOARD**

Based on the binding testimony of the Petitioner's architect and on the evidence of record, the Board finds that the requested variance can be granted. The requested

variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds, based on the Statement and the testimony of Mr. Carib, that the proposed development uses an existing nonconforming structure, a screen porch, which was built in 1939 and encroaches into the side lot line setback. Accordingly, the Board finds that the application satisfies this element of the variance test.

*Section 59-7.3.2.E.2.a.v: the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Board finds, based on the assertion in the Statement and photographs in the record at Exhibit 5(e), that the proposed enclosure of the existing screen porch, in its current location and without expanding its footprint, would substantially conform with the established historic or traditional development pattern of this neighborhood, in satisfaction of this element of the variance test. The photographs submitted by the Petitioner show a pattern of homes that encroach on the side lot line setback in the immediate vicinity of the Petitioner's property. See Exhibits 4(a) and 5(e). In addition, the Board finds that the screen porch which the Petitioner proposes to enclose has existed on the subject property, in the side setback, since the original construction of this house in 1939. See Exhibit 3.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the house and screen porch on the subject property were built in 1939, prior to the Petitioner's ownership of the property. Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this property.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

As noted above, the existing screen porch is nonconforming, with one side that, like other properties in the neighborhood, encroaches on the required setback from the side lot line. The Board finds that the Petitioner cannot enclose this existing, nonconforming structure without the grant of the requested variance, causing the Petitioner a practical difficulty. The Board reiterates at this juncture that for the purpose of determining the applicable setbacks, the County treats a screen porch the same way it treats a structure with walls; the existing screen porch and the proposed enclosed living space are indistinguishable in that sense. Thus the Board finds that the requested

variance is the minimum needed to allow the proposed one-story addition in the place of the existing, nonconforming structure (screen porch), and to overcome the practical difficulty that full compliance with the Zoning Ordinance would impose. The Board further finds that the variance requested is minimal given that the proposed construction will not expand the footprint of the existing house. Accordingly, the Board concludes that the grant of the requested variance is the minimum necessary to allow the proposed construction and therefore to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that granting the variance to allow the Petitioner to proceed with the proposed construction will continue the residential use of the property and will not substantially impair the intent and integrity of the Bethesda Chevy Chase Master Plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the record contains no opposition to the proposed construction which, as noted above, would continue the residential use of this home. In addition, the Board finds, per the Statement, that "[t]he proposed enclosure of the existing screen porch will not have any adverse effect on the abutting or confronting properties as it is in character with the neighborhood and does not exceed the existing footprint of the current porch." See Exhibit 3.

Accordingly, the requested variance to allow the proposed construction of a one-story addition is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a)-(c).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Jon W. Cook, with Stanley B. Boyd, Vice Chair, and Bruce Goldensohn in agreement, and with Katherine Freeman necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 24th day of July, 2019.



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Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.